

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 8	CCRB Case #: 200800818	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/01/2008 2:50 AM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 7/1/2009	EO SOL 7/1/2009	
Date/Time CV Reported Wed, 01/16/2008 3:03 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/16/2008 3:03 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Johnny Arroyo	12855	937998	081 PCT
2. POM Emmanuel Galloza	06116	938521	081 PCT
3. LT Raymond Festino	00000	915709	081 PCT
4. SGT Robert Conwell	00261	925115	081 PCT
5. Officers			081 PCT
6. An officer			081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kim Thy	21623	933410	081 PCT
2. POM Bernabe Arriaga	29135	932269	081 PCT
3. POF Artese Davis	14502	929998	081 PCT
4. POM Jason Ianno	12849	935040	081 PCT
5. LT Harold Jones	00000	911700	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Emmanuel Galloza	Force: PO Emmanuel Galloza used physical force against § 87(2)(b)	
B.SGT Robert Conwell	Abuse: Sgt. Robert Conwell stopped § 87(2)(b)	
C.LT Raymond Festino	Force: Lt. Raymond Festino used pepper spray against § 87(2)(b)	
D.SGT Robert Conwell	Force: Sgt. Robert Conwell struck § 87(2)(b) with an asp	
E.LT Raymond Festino	Force: Lt. Raymond Festino used pepper spray against § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G. An officer	Force: An officer used physical force against § 87(2)(b)	
H. An officer	Force: An officer used pepper spray against § 87(2)(b)	
I.POM Johnny Arroyo	Abuse: PO Johnny Arroyo refused to provide his name and shield number to § 87(2)(b)	

Synopsis

On January 1, 2008, at approximately 2:50 AM, § 87(2)(b) and his sister, § 87(2)(b) were in the lobby of § 87(2)(b) in Brooklyn. They were celebrating the New Year with a group of their acquaintances, who were also residents of the building. Two officers, identified through the investigation as PO Johnny Arroyo and PO Emmanuel Galloza of the 81st Precinct, instructed the group to leave the lobby. As § 87(2)(b) walked away, PO Galloza allegedly pushed him (**Allegation A**), causing him to collide with the wall by the stairwell. PO Galloza then allegedly hit § 87(2)(b) in the back of his head with the base of his palm (**Within Allegation A**). § 87(2)(b) and § 87(2)(b) went to their residence and told their mother, § 87(2)(b) what had transpired. § 87(2)(b) went to the lobby and briefly spoke with PO Arroyo and PO Galloza outside of an adjacent building, located at § 87(2)(b). At the officers' request, § 87(2)(b) returned to her residence. § 87(2)(b) and an acquaintance, § 87(2)(b) remained in the lobby of § 87(2)(b). They entered the elevator and, as the doors were closing, a male identified through the investigation as § 87(2)(b) swiftly entered after them. An officer, identified through the investigation as Sgt. Robert Conwell of the 81st Precinct, reached into the elevator, grabbed § 87(2)(b) and attempted to pull him off of the elevator (**Allegation B**). An officer, identified through the investigation as Lt. Raymond Festino of the 81st Precinct, emitted pepper-spray into the elevator (**Allegation C**) when occupants within this elevator began to pull § 87(2)(b) away from Sgt. Conwell. § 87(2)(b) alleged that Sgt. Conwell removed an asp and began swinging it within the interior of the elevator, striking her on the upper right lip as a result (**Allegation D**). § 87(2)(b) and § 87(2)(b) exited the elevator to escape the effects of the pepper spray. § 87(2)(b) alleged that, when she asked Lt. Festino what was going on, he pepper-sprayed her twice in the face (**Allegation E**). Officers then allegedly grabbed her, put her against a wall and secured her in handcuffs (**Allegation F**). § 87(2)(b) stated that she attempted to leave the hallway with an acquaintance, § 87(2)(b) and was grabbed by an officer whom the investigation could not identify (**Allegation G**). A struggle ensued, during which this officer allegedly pepper-sprayed § 87(2)(b) in the face (**Allegation H**). Officers secured § 87(2)(b) in handcuffs and assisted her into a standing position. PO Arroyo then escorted § 87(2)(b) out of § 87(2)(b) and towards a police vehicle. § 87(2)(b) stated that she asked for PO Arroyo's name and shield number at this time, which he allegedly refused to provide (**Allegation I**). § 87(2)(b) and § 87(2)(b) were transported to the 81st Precinct and charged § 87(2)(a) 160.50.

§ 87(2)(g)

This case was originally assigned to Investigator Keam. Following her resignation, this case was reassigned to Investigator Steel on October 8, 2008.

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). She is a Hispanic female who is 5' tall, weighs 170 pounds and has black hair and brown eyes. § 87(2)(b) filed a complaint with the CCRB by phone on January 16, 2008 (encl. 4a – 4d). § 87(2)(b) provided a brief telephone statement to the CCRB on January 18, 2008 (encl. 5). § 87(2)(b) was interviewed at the CCRB on February 8, 2008 (encl. 6a – 6e).

On January 1, 2008, at approximately 2:00 AM, § 87(2)(b) was in her residence, located at § 87(2)(b) in Brooklyn. § 87(2)(b)'s son, § 87(2)(b) and her daughter, § 87(2)(b) were celebrating the New Year in the lobby of § 87(2)(b) by taking pictures with their friends. § 87(2)(b) and § 87(2)(b) returned to their residence and informed § 87(2)(b) that an officer had just struck § 87(2)(b) in the lobby of their building. § 87(2)(b) immediately put on a pair of slippers and went to the lobby of § 87(2)(b) to find the officer who had struck § 87(2)(b). § 87(2)(b) told § 87(2)(b) to remain in their apartment.

When § 87(2)(b) reached the lobby of her building, she saw that four uniformed officers were walking out of the lobby area of § 87(2)(b) onto the street. § 87(2)(b) explained that the lobbies of § 87(2)(b) and § 87(2)(b) are connected by a communal hallway. Two of these officers were identified through the investigation as PO Emmanuel Galloza and PO Johnny Arroyo of the 81st Precinct. § 87(2)(b) stated that she did not have any interaction with the two officers whom the investigation was unable to identify. At some point during the incident, § 87(2)(b) and § 87(2)(b) had written down the officers' names on a piece of paper. From that piece of paper, § 87(2)(b) learned PO Galloza and PO Arroyo's names and correctly attributed them to each officer. § 87(2)(b) did not specify when she obtained this piece of paper or how she connected the names of these officers to the officers with whom she interacted. When asked if she knew why the officers had been in the building, § 87(2)(b) said that she later learned that there was a domestic violence incident on the § 87(2)(b) of her building.

§ 87(2)(b) explained that § 87(2)(b) and § 87(2)(b) are connected by a communal hallway which leads between the lobbies of each building. § 87(2)(b) ran down the hallway to the lobby of § 87(2)(b) and caught up with PO Galloza and PO Arroyo outside § 87(2)(b). § 87(2)(b) told them that § 87(2)(b) had reportedly been hit by one of the officers in the lobby of § 87(2)(b). The officers did not respond and continued to walk away from the building in the direction of the street. § 87(2)(b) followed after PO Galloza and PO Arroyo and asked them what had happened. The officers told § 87(2)(b) that several adolescents had been in the hallway and were instructed to go upstairs. § 87(2)(b) then asked for the officers' shield numbers. PO Arroyo allegedly responded, "If you want it, get it while I'm walking to the car. If not, oh well." PO Galloza did not respond to her request and § 87(2)(b) was unable to obtain either PO Galloza or PO Arroyo's shield numbers at this time.

§ 87(2)(b) exited § 87(2)(b) at this time. She pointed towards PO Galloza and identified him as the officer who had struck § 87(2)(b). § 87(2)(b) then asked PO Arroyo for a pen so that she could record the officers' shield numbers and he replied negatively. § 87(2)(b) gave § 87(2)(b) a pen, but § 87(2)(b) was still unable to record the shield numbers as the officers continued to walk away from her. While § 87(2)(b) was following the officers, § 87(2)(b) exited § 87(2)(b) and pointed towards PO Galloza while stating, "Ma, that's who hit me!" The officers then told § 87(2)(b) that she should take her children back into the building before the situation escalated any further.

§ 87(2)(b) and § 87(2)(b) reentered the building. § 87(2)(b) and § 87(2)(b) returned to their residence, but § 87(2)(b) remained in the lobby with § 87(2)(b)'s acquaintance, § 87(2)(b) and several other individuals. Three to five minutes later, some of § 87(2)(b)'s acquaintances came upstairs and told her that an officer had hit § 87(2)(b) with a stick and pepper-sprayed § 87(2)(b). § 87(2)(b) again returned to the lobby of § 87(2)(b). When she reached the lobby, the police, § 87(2)(b) and § 87(2)(b) were gone. § 87(2)(b) then went to the 81st Precinct.

When § 87(2)(b) arrived at the precinct, she saw PO Arroyo and PO Galloza walking near the front desk. § 87(2)(b) asked two officers unrelated to the original incident, one of whom the investigation

identified as Lt. Harold Jones of the 81st Precinct, whether PO Arroyo and PO Galloza had to give her their shield numbers upon request. Each officer replied affirmatively and then spoke with both officers. Both PO Arroyo and PO Galloza eventually provided their shield numbers to § 87(2)(b). The officers would not allow § 87(2)(b) to visit § 87(2)(b) in the cell area, so she returned home.

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) is a black male who has black hair and brown eyes. § 87(2)(b) declined to provide his height or weight. He was interviewed at the CCRB on February 21, 2008 (encl. 7a – 7d).

On January 1, 2008, at approximately 2:00 AM, § 87(2)(b) was in the lobby of his building, located at § 87(2)(b) in Brooklyn. § 87(2)(b) and his sister, § 87(2)(b) were in the lobby of the building celebrating the New Year by taking pictures with some of their friends. § 87(2)(b) was wearing a white tank top, jeans, a green hat and Timberland boots. Three uniformed officers, two of whom were identified as PO Emmanuel Galloza and PO Johnny Arroyo of the 81st Precinct, entered the lobby and instructed § 87(2)(b) and his acquaintances to go upstairs. § 87(2)(b) was standing near the elevator in the lobby at this time.

PO Galloza, whom § 87(2)(b) referred to by name, told him that he had to take the stairs as opposed to using the elevator. § 87(2)(b) described PO Galloza as a white or Hispanic male who was about 5'4" to 5'5" tall, weighed 160 pounds, had black hair, a moustache and acne on his face. § 87(2)(b) observed from one of the officers' uniforms that his name was PO Arroyo, whom he described as Hispanic male who was about 5'7" tall, weighed 180 pounds, and had black hair. § 87(2)(b) described the other officer, whom the investigation was unable to identify, as a uniformed black male officer who was wearing a wool mask over his face. Neither PO Arroyo nor the unidentified officer interacted with

§ 87(2)(b)

§ 87(2)(b) told PO Galloza that he was waiting for his sister, to which PO Galloza responded, "Oh, you think you're tough." § 87(2)(b) walked over to § 87(2)(b) and they both walked towards the stairs. When they reached the entrance of the stairwell, § 87(2)(b) felt someone push him from behind (**Allegation A**). He was pushed so forcefully that he stepped forward several paces and ran into the wall at the base of the stairwell. § 87(2)(b) saw by looking behind him and saw that PO Galloza had pushed him. After § 87(2)(b) collided with the wall, PO Galloza then allegedly hit him once on the back of his head with the base of his palm (**Within Allegation A**). § 87(2)(b) quickly looked for § 87(2)(b) and saw that she was standing behind him.

PO Galloza did not say anything to § 87(2)(b). § 87(2)(b) did not say anything to PO Galloza, nor react in any way when pushed or hit by him. As a result of being pushed into the wall, § 87(2)(b) sustained a small bruise on his left hand. § 87(2)(b) did not seek medical attention as a result of the incident, but did not specify why. § 87(2)(b) maintained that at no point during the incident did he yell, shout or use profanity. § 87(2)(b) did not swing at any of the officers or initiate physical contact with them. § 87(2)(b) and § 87(2)(b) went to their residence and informed their mother, § 87(2)(b) what had transpired in the lobby. § 87(2)(b) had no further interaction with any officers on the day of the incident.

§ 87(2)(b)

§ 87(2)(b) is a black male who is § 87(2)(b). § 87(2)(b) provided a telephone statement on October 24, 2008 (encl. 11).

On January 1, 2008, at approximately 1:00 AM, § 87(2)(b) ate dinner in an unspecified apartment within § 87(2)(b) in Brooklyn. He then exited this building, walked across the street and made a purchase at a corner store before returning to the building. § 87(2)(b) saw that there were police

vehicles parked in front of the building and that a few police officers were in the area, but he never saw any crowds of people or any other civilian individuals standing outside of the building.

§ 87(2)(b) entered the lobby and, with about four to six other people, entered the elevator. Suddenly, an officer identified through the investigation as Sgt. Robert Conwell of the 81st Precinct, began to pull him out of the elevator. (**Allegation B**). § 87(2)(b) described Sgt. Conwell as a white male who was about 6' tall, thin, had black hair and was in a blue uniform. § 87(2)(b) began to ask Sgt. Conwell why he was pulling him out of the elevator. Meanwhile, § 87(2)(b)'s cousin, § 87(2)(b) pulled on § 87(2)(b)'s jacket to prevent Sgt. Conwell from removing him from the elevator. § 87(2)(b) did not know what had happened or what had precipitated his encounter with Sgt. Conwell. He assumed that there was an altercation between the officers and residents of the building before he came downstairs.

The other four to six occupants in the elevator were not doing anything at this time. Sgt. Conwell then allegedly removed his pepper spray and emitted it into the elevator, though the investigation determined that Lt. Raymond Festino of the 81st Precinct was the actual officer who pepper-sprayed the interior of the elevator (**Allegation C**). § 87(2)(b) did not know why Lt. Festino pepper-sprayed the inside of the elevator. He did not appear to pepper-spray a specific person, though he may have been aiming for § 87(2)(b) but mainly appeared to be generally pepper-spraying the inside of the elevator. The occupants of the elevator then walked into the lobby to escape the effects of the pepper spray. § 87(2)(b) was not feeling the effects of the pepper spray as much because he was wearing sunglasses and, as a result, the pepper spray had not entered his eyes.

§ 87(2)(b) and two female individuals, with whom he was not familiar, were arrested as a result of the incident. There were approximately six uniformed officers, including Sgt. Conwell, in the lobby of the building. § 87(2)(b) believed that the two female individuals, identified through the investigation as § 87(2)(b) and § 87(2)(b) were arrested because they were asking the officers why § 87(2)(b) had been pepper-sprayed. § 87(2)(b) did not know why he was arrested, though he recalled being charged with arrest. § 87(2)(b) explained that this charge has not been resolved because he failed to appear for court and believed that a warrant had consequently been issued for his arrest.

§ 87(2)(b) never saw any officers holding batons or asps during the incident. § 87(2)(b) never saw any of the officers bring § 87(2)(b) or § 87(2)(b) to the ground. § 87(2)(b) never saw any officers pepper-spray § 87(2)(b) or § 87(2)(b) once they had exited the elevator. § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were transported to the 81st Precinct.

The investigation made the following attempts to obtain a formal statement from § 87(2)(b). Between January 18, 2008, and February 20, 2008, three letters were sent to § 87(2)(b)'s address. On February 12, 2008, a requested Lexis Nexis check confirmed that § 87(2)(b) resided at the address to which these letters were sent, but no additional contact information was yielded as a result of this search. On March 19, 2008, a submitted Verizon subpoena yielded a telephone number for § 87(2)(b). Between this date and October 24, 2008, four calls were placed to § 87(2)(b)'s number. On October 24, 2008, an interview was scheduled with § 87(2)(b) for November 7, 2008. On this date, § 87(2)(b) failed to appear for his scheduled interview. On November 7, 2008, a missed appointment letter was sent to § 87(2)(b) and a fifth call was placed to his listed number. To date, § 87(2)(b) has failed to contact the CCRB with regard to this case and no further attempts to contact him have been made.

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). She is a black female who is 5'5" tall, weighs 103 pounds and has brown hair and brown eyes. § 87(2)(b) provided statements to medical personnel on January 1, 2008 (encl. 28a – 28b). § 87(2)(b) was interviewed at the CCRB on February 8, 2008 (encl. 8a – 8e).

On January 1, 2008, at approximately 1:00 AM, § 87(2)(b) was in the lobby of § 87(2)(b) in Brooklyn with her brother, § 87(2)(b) and approximately ten other adolescents from the building. They were taking pictures of each other to celebrate the New Year. While taking pictures, four to

five uniformed officers, two of whom were identified through the investigation as PO Emmanuel Galloza and PO Johnny Arroyo of the 81st Precinct, entered the lobby and instructed the group to leave. Those in the group walked towards the stairs, as the elevator was broken, and the lobby quickly began to clear.

§ 87(2)(b) reached the stairwell first and waited for § 87(2)(b). As § 87(2)(b) was waiting, PO Galloza approached him and said, “Oh, you want to be a tough guy.” PO Galloza then allegedly pushed him in the chest, causing him to hit an unspecified part of his body against the wall near the bottom of the staircase. § 87(2)(b) was visibly angry, but did not do or say anything to the officers. § 87(2)(b) observed from the officer’s shield that his name was PO Galloza, whom she described as a white male who was about 5’5” to 6’ tall, muscular, with brown hair and acne. § 87(2)(b) also observed at this time that one of the officer’s names was PO Arroyo, whom she described as a white male with brown hair and blue eyes who may have been wearing glasses.

§ 87(2)(b), § 87(2)(b) and § 87(2)(b) immediately went upstairs to their residence and told their mother, § 87(2)(b) what had transpired in the lobby. After hearing what had happened, § 87(2)(b) went to the lobby with the intention of asking the officers’ for their shield numbers. § 87(2)(b) retrieved a piece of paper and recorded PO Galloza’s and PO Arroyo’s names at this time. After waiting upstairs for a few minutes, § 87(2)(b) went back downstairs to determine what had happened to § 87(2)(b). § 87(2)(b) saw that § 87(2)(b) was standing outside of § 87(2)(b) with PO Arroyo and PO Galloza.

§ 87(2)(b) heard § 87(2)(b) request PO Galloza’s name and shield number. PO Galloza allegedly said, “Try to get it from me,” while walking away. § 87(2)(b) continued to try and obtain PO Galloza’s shield number. § 87(2)(b) and an acquaintance, § 87(2)(b) returned to the lobby of their building with a few other residents. § 87(2)(b) attempted to calm the group down and recommended that they return to their residence. They agreed and walked towards the elevator. As § 87(2)(b) and approximately eight to ten additional individuals were entering the elevator, a number of police officers entered the lobby of § 87(2)(b).

One of these officers, whom § 87(2)(b) described as a white male who was about 6’ tall and wore a white uniform, removed his asp and approached the open elevator. While this physical description matches that of Lt. Raymond Festino of the 81st Precinct, the investigation determined that the officer who removed his asp was Sgt. Robert Conwell of the 81st Precinct. Sgt. Conwell grasped a black male wearing a red Champion jacket, identified through the investigation as § 87(2)(b) who was standing in the middle of the elevator. Sgt. Conwell then began pulling § 87(2)(b) off of the elevator. He also began swinging his asp around in the elevator. In the process, § 87(2)(b) was struck on the right side of her upper lip with the asp (**Allegation D**). § 87(2)(b) did not know whether any other individuals were struck with the asp.

§ 87(2)(b) alleged that the same officer who struck her with the asp then emitted pepper spray into the elevator. However, the investigation determined that the officer who pepper-sprayed into the elevator was Lt. Festino. § 87(2)(b) did not state whether specific individuals in the elevator were pepper-sprayed as a result. Those in the elevator began to run into the lobby as additional officers were responding to the scene. Lt. Festino then pulled § 87(2)(b) from the elevator and also pepper-sprayed her in the face. § 87(2)(b) and her acquaintance, § 87(2)(b) walked towards the lobby of § 87(2)(b) to get away from the scene. § 87(2)(b) and § 87(2)(b) were experiencing difficulties breathing as a result of the pepper spray’s effects.

An officer, § 87(2)(g) followed § 87(2)(b) and § 87(2)(b) as they walked towards the lobby of § 87(2)(b). § 87(2)(b) described this officer as a white male who was between 5’5” and 6’ tall. § 87(2)(b) could not describe the officer in further detail. The officer grasped § 87(2)(b) and pulled her towards him (**Allegation G**). § 87(2)(b) tried to pull § 87(2)(b) away. After struggling for a few seconds, the officer pepper-sprayed § 87(2)(b) in the face in a burst of spray that lasted a few seconds (**Allegation H**). § 87(2)(b) then fell to the ground.

Shortly thereafter, approximately five officers arrived and secured § 87(2)(b) in handcuffs. Of these five officers, § 87(2)(b) could only describe a Hispanic male officer who was chubby, wore a diamond earring, had black hair and was wearing a blue sweater with a yellow inscription. The officers assisted § 87(2)(b) into a standing position and escorted her to a police vehicle. § 87(2)(b) asked the officer who was walking her towards this vehicle for his name and shield number, but he did not respond (**Allegation I**). Because of the effects of the pepper spray, § 87(2)(b) could not see and therefore could not describe the officer who placed her in the police vehicle. § 87(2)(b) did not know whether anyone else was placed in the vehicle with her.

§ 87(2)(b) was transported to the 81st Precinct. EMS responded to the precinct stationhouse and treated § 87(2)(b) for pepper spray exposure. According to an ambulance call report (encl. 28a – 28b), § 87(2)(b) complained that when she was pepper-sprayed, some of the spray got into her nose, mouth and eyes. She had no other complaints, stated she felt fine after the effects of the pepper-spray were treated and did not want to go to the hospital. § 87(2)(b) did not know what had transpired in her building which would have resulted in her arrest or § 87(2)(b)'s arrest.

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). She is a Hispanic female who is 5'4" tall, weighs 145 pounds and has brown hair and brown eyes. § 87(2)(b) provided statements to medical personnel on January 1, 2008 (encl. 27a – 27b). § 87(2)(b) provided a telephone statement to the CCRB on January 18, 2008 (encl. 9). § 87(2)(b) was interviewed at the CCRB on January 22, 2008 (encl. 10a – 10e).

On January 1, 2008, at approximately 1:30 AM, § 87(2)(b) was in the lobby of § 87(2)(b) in Brooklyn. § 87(2)(b) and approximately twenty-five other residents of the building had gathered in the lobby to take pictures and celebrate the New Year. At that time, people had begun to clear out of the lobby and return to their apartments. As they did so, And § 87(2)(b) noticed some police officers outside of the building. The officers were standing at the door and were waiting to be let into the building by security officers who were monitoring the door. When the security officers let the police officers in, a police officer, whom § 87(2)(b) identified by name as Lt. Festino, started to yell, "Everybody clear the hallways. Otherwise, you are going to jail." § 87(2)(b) described Lt. Festino as a white male who was about 5'7" to 6' tall, had brown hair, was between thirty-five to forty years old and was wearing a white uniform.

At Lt. Festino's instruction, people began to exit the lobby via the elevator and the stairs. Lt. Festino repeated his instruction and, in a very short period of time, only five to six individuals were waiting to enter the elevator. Lt. Festino and several other officers approached the elevator and said, "Get out of the elevator!" By this time, the elevator was very full. So much so that the doors could barely close. § 87(2)(b) was standing near the door and to the right side of the elevator. Lt. Festino shouted, "You with the red shirt get out of the elevator!" Lt. Festino had a baton in his hand. § 87(2)(b) stated that he took the baton and raised it over his head and started to swing it. She did not know if he struck anyone with the baton. People started to move toward the back of the elevator to get away from the baton.

Lt. Festino and two additional officers, whom § 87(2)(b) identified by name as PO Arroyo and PO Galloza, began to pull people off of the elevator. § 87(2)(b) described PO Arroyo as a Hispanic male who had dark hair, was clean shaven and was in a blue uniform. § 87(2)(b) described PO Galloza as a white male who was between 5'2" to 5'7" tall, had brown hair and was in a blue uniform. § 87(2)(b) recorded the officers' names from their shields. § 87(2)(b) felt a spray coming from the right side of the elevator and assumed that an officer had sprayed the occupants of the elevator with pepper spray. After a few seconds, § 87(2)(b) and the other occupants of the elevator began to feel uncomfortable and express that they were having difficulty breathing. Those in the elevator began to exit in order to get away from the pepper spray. The officers eventually got a hold of the male in the red shirt, identified through the investigation as § 87(2)(b). When § 87(2)(b) exited the elevator, her eyes were irritated and she began to cough.

§ 87(2)(b) asked Lt. Festino, who was standing in the lobby about ten feet away, why the officers had done that. § 87(2)(b) was not yelling or speaking in a raised tone of voice. She stated that she had her

arms out and to her side. Lt. Festino said, “Stand back! Stand back!” § 87(2)(b) said, “I am back. I’m just asking why you did that.” Lt. Festino then pepper sprayed her two times in the face (**Allegation E**). § 87(2)(b) grabbed her temples and asked, “Why did you do that?” § 87(2)(b) then felt more pepper spray being sprayed into her eyes (**Within Allegation E**). Officers, whom § 87(2)(b) did not describe then grabbed her and put her up against a wall in the lobby (**Allegation F**). § 87(2)(b) hit her head on the wall, but was not injured. She began rubbing her face and sat down on the floor. Officers picked her up and placed her in handcuffs.

The officers then escorted her outside and placed her in a police vehicle. § 87(2)(b) could not describe the vehicle or the officers who were with her because, as a result of being pepper-sprayed, she could not see. § 87(2)(b) did not know whether she was transported with any other residents from her building. § 87(2)(b) was transported to the 81st Precinct. While on the way to the precinct, the officers asked § 87(2)(b) if she wanted to go to the hospital and she replied affirmatively. At the 81st Precinct, a female officer escorted § 87(2)(b) to the bathroom and flushed her eyes with water. After rinsing her eyes, § 87(2)(b) saw that § 87(2)(b) was also at the precinct. § 87(2)(b) did not know why § 87(2)(b) had been brought to the precinct.

An ambulance arrived at the precinct and examined both § 87(2)(b) and § 87(2)(b). According to an ambulance call report (encl. 27a – 27b), § 87(2)(b) stated that her eyes were burning, explained that she was pepper-sprayed by the police and stated that she did not want to go to the hospital. § 87(2)(b) observed that § 87(2)(b)’s upper lip was swollen and bruised. § 87(2)(b) informed § 87(2)(b) that she had been hit with a baton. § 87(2)(b) was released from the precinct with a desk appearance ticket § 87(2)(a) 160.50. On January 4, 2008, § 87(2)(b) went to the 81st Precinct and obtained Lt. Festino’s name at this time from an officer at the front desk.

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement to the CCRB on July 14, 2008 (encl. 13).

On January 1, 2008, at approximately 1:00 PM, § 87(2)(b) entered the elevator of § 87(2)(b) in Brooklyn and was about to go upstairs with one of her acquaintances, § 87(2)(b). § 87(2)(b) was standing in the front of the elevator. As the doors began to close, a male adolescent, identified through the investigation as § 87(2)(b) swiftly entered the elevator. Three uniformed officers followed him and attempted to pull him off of the elevator. § 87(2)(b) explained that, earlier that evening, someone had thrown a bottle at police officers. She therefore assumed that the officers suspected that § 87(2)(b) was the individual who had thrown the bottle.

Other occupants in the elevator pulled on § 87(2)(b) to keep him away from the officers. § 87(2)(b) did not see anyone push or pull at the officers during this process, though she stated that the officers may have thought the occupants on the elevator were trying to touch them as they pulled § 87(2)(b) away. All three officers then removed their pepper spray and emitted it into the elevator. Also at this time, a white male officer in a white uniform shirt removed his baton and swung it into the elevator. § 87(2)(b) did not know whether he was trying to strike anyone in particular, though she stated that § 87(2)(b) was hit in the lip as a result.

When the elevator doors opened fully, everyone began to exit the elevator. § 87(2)(b) pulled § 87(2)(b) away from the elevator. Officers approached and instructed her to let § 87(2)(b) go. A uniformed white male officer then pepper-sprayed § 87(2)(b). § 87(2)(b) did not know why this officer pepper-sprayed her and could not further describe him in any detail. Several officers then restrained § 87(2)(b). § 87(2)(b) thought that the white male officer who struck § 87(2)(b) with a baton may have been one of those who secured her in handcuffs. As the officers were handcuffing § 87(2)(b), § 87(2)(b) exited the lobby and went upstairs.

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement to the CCRB on July 8, 2008 (encl. 12).

On January 1, 2008, at approximately 1:00 AM, § 87(2)(b) and her daughter, § 87(2)(b), and approximately thirteen other individuals were in the lobby of their building, located at § 87(2)(b) in Brooklyn. A number of officers, who had responded to the building in response to an incident which had transpired earlier that evening, instructed § 87(2)(b) and those she was with to return to their apartments via the elevator. § 87(2)(b) was unable to describe these officers. § 87(2)(b) and § 87(2)(b) entered the elevator and stood towards the back. As the elevator doors were closing, two young male adolescents swiftly entered the elevator. One of these individuals was identified through the investigation as § 87(2)(b).

As § 87(2)(b) and the other adolescent entered the elevator, one of them pushed or brushed against one of the three officers standing in front of the elevator. One of the officers then removed his pepper-spray and emitted pepper spray into the elevator. The officers then began to pull people out of the elevator. Two young female adolescents, identified through the investigation as § 87(2)(b) and § 87(2)(b), quickly exited the elevator and entered the lobby. Seconds later, the elevator door closed and rose to § 87(2)(b)'s residence. § 87(2)(b) stated that she did not observe any problems between the officers or any of the individuals in the lobby prior to entering the elevator.

Police Officer Statements:

PO Emmanuel Galloza

PO Emmanuel Galloza is § 87(2)(b) old. He is a Hispanic male who is 5'7" tall, weighs 185 pounds and has brown hair and brown eyes. PO Galloza is assigned to the 81st Precinct and has been a member of the service for three years. PO Galloza was interviewed at the CCRB On April 21, 2008 (encl. 20a – 20c). On the day of the incident, PO Galloza worked from 11:15 PM to 7:50 AM with PO Johnny Arroyo. They were assigned to sector patrol and were in uniform and in a marked police vehicle.

PO Galloza's memobook (encl. 14a – 14c) notes that, at 2:50 AM, he responded to a past robbery at § 87(2)(b) Apartment § 87(2)(b). At 3:27 AM, PO Galloza reported three arrests at this location. At 4:06 AM, PO Galloza released § 87(2)(b)'s property to § 87(2)(b). At 4:14 AM, PO Galloza began preparing paperwork related to the incident and related the following: Officers attempted to disperse crowd in hallway of § 87(2)(b). The people in the crowd were being loud, were breaking glass bottles, causing public alarm and hazardous conditions. The crowd refused to move. Officers attempted to control certain people that were initiating the crowd. People then began to throw glass bottles at the officers. Officers then attempted to effect arrests and the mothers of these arrestees attempted to prevent the officers from doing so. § 87(2)(b), § 87(2)(b) and § 87(2)(b) were arrested § 87(2)(a) 160.50. At 10:50 AM, § 87(2)(b) was released with a desk appearance ticket. At 12:15 PM, § 87(2)(b) was released with a desk appearance ticket.

Police Reports

PO Galloza prepared arrest reports corresponding to § 87(2)(b) (encl. 15a – 15b), § 87(2)(b) (encl. 18a – 18b) and § 87(2)(b) (encl. 16a – 16b), who was later issued a desk appearance ticket by PO Galloza (encl. 17), pertaining to the incident. § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Galloza also prepared a complaint report (encl. 19a – 19b) pertaining to the incident. § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

CCRB Statement

On January 1, 2008, at 2:50 AM, PO Galloza and his partner, PO Johnny Arroyo, responded to a dispute originating from apartment § 87(2)(b) in § 87(2)(b). PO Galloza and PO Arroyo entered the lobby and saw a group of approximately ten to twelve adolescents yelling and creating noise in the hallway leading to the lobby of an adjacent building, § 87(2)(b). The adolescents were also throwing glass bottles and PO Galloza heard them say, “Fuck the police! Get out of my fucking building!” When presented with a photograph of § 87(2)(b), PO Galloza identified him as one of the adolescents in the hallway. He recalled that § 87(2)(b) had taken off his shirt as though he were preparing to fight someone, but stated that he never pushed or struck § 87(2)(b). PO Galloza and PO Arroyo ignored the adolescents and continued on to apartment § 87(2)(b).

When PO Galloza and PO Arroyo returned to the lobby, they observed that the adolescents were still in the same location. PO Galloza and PO Arroyo instructed them to leave. The adolescents were clearly intoxicated and definitely not of legal drinking age. PO Galloza observed multiple beer bottles in the vicinity of the group and could also smell alcohol on the adolescents’ breath. Only one male adolescent walked away in compliance with the officers’ commands. The other adolescents stood and stared at the officers, though they were repeatedly instructed to leave the area. Finally, at the admonishment of two female adolescents, the group began to clear. PO Galloza did not come into physical contact with any of the adolescents in the group and none of them attempted to push him or his partner.

PO Galloza and PO Arroyo decided to resume patrol. As they exited the building, a number of the adolescents from the original group and individuals who appeared to be their mothers followed them. There were about twenty to thirty people in this new assemblage. The individuals in this crowd began to shout at the officers and ask them what they had done to their sons. One of these individuals, identified through the investigation as § 87(2)(b), asked both PO Galloza and PO Arroyo for their names and shield numbers. § 87(2)(b) also asked for a pen and some paper. PO Galloza told § 87(2)(b) that he did not have a pen or paper, but that she could write the information down herself.

PO Galloza overheard § 87(2)(b) ask another female individual, identified through the investigation as § 87(2)(b), to give her a pen and paper. PO Galloza stood and waited as § 87(2)(b) recorded both his and PO Arroyo’s name and shield numbers from their uniforms. There were a few other officers in the area at this time, but PO Galloza did not recall who they were. When § 87(2)(b) finished writing, PO Galloza and PO Arroyo continued to walk away. As they left, however, an individual in the crowd threw a glass Snapple® bottle which struck PO Galloza in the chest. PO Galloza explained that he was walking backwards towards his vehicle so that he could continue to face the crowd. PO Galloza requested additional units to the scene at this time.

Approximately twenty officers responded to the scene. They and PO Galloza and PO Arroyo attempted to move the crowd back into the building. By this time, individuals were throwing bottles at the officers from the rooftop. These bottles were landing within a few feet of the officers. A lieutenant present at the scene of the incident, identified through the investigation as Lt. Raymond Festino of the 81st Precinct, instructed the officers to tell the crowd to enter the building. Upon the issuance of these commands, the individuals in the crowd began to enter the lobby of § 87(2)(b) and walked towards the elevator. Though the individuals in the crowd were loud, they were not fighting amongst themselves or with the officers.

After a few minutes, PO Galloza turned towards the elevator and saw Sgt. Robert Conwell pulling an individual, subsequently identified through his arrest as § 87(2)(b), off of the elevator. Several individuals on the elevator were holding on to § 87(2)(b) to prevent Sgt. Conwell from pulling him off of the elevator. One of these individuals, subsequently identified through her arrest as § 87(2)(b), also pushed Sgt. Conwell while attempting to pull § 87(2)(b) away from him. PO Galloza approached Sgt.

Conwell, assisted him in pulling § 87(2)(b) off of the elevator and then stood with § 87(2)(b) for the remainder of the time he was at the scene of the incident.

PO Galloza saw officers attempting to restrain § 87(2)(b). Two other female individuals stood between § 87(2)(b) and the officers to prevent them from placing her under arrest. When presented with a photograph of § 87(2)(b), PO Galloza recalled seeing her in the crowd and knew she had been arrested, but did not recall the circumstances surrounding the arrest. The crowd in the lobby continued to grow larger as various people gathered to see what was going on. Around this time, PO Galloza smelled pepper spray. He did not know which officers or how many officers deployed pepper spray during the incident. PO Galloza did not see any officers use their asp or batons. PO Galloza later went to the 81st Precinct. He recalled seeing § 87(2)(b) in the precinct waiting room, but did not interact with her at this time.

PO Johnny Arroyo

PO Johnny Arroyo is § 87(2)(b) old. He is a Hispanic male who is 5'8" tall, weighs 205 pounds and has brown hair and brown eyes. PO Arroyo is assigned to the 81st Precinct and has been a member of the service for three years. PO Arroyo was interviewed at the CCRB on April 21, 2008 (encl. 21a – 21c). On the day of the incident, PO Arroyo worked from 11:25 PM on December 31, 2007, to 7:50 AM on January 1, 2008. PO Arroyo was assigned to sector patrol, was in uniform and was working with PO Emmanuel Galloza. PO Arroyo did not have his memobook with him at the time of his interview with the CCRB.

CCRB Statement

On January 1, 2008, at approximately 2:45 PM, PO Arroyo and his partner, PO Emmanuel Galloza, responded to § 87(2)(b) in regards to a reported assault. PO Arroyo and PO Galloza entered the lobby and were about to get onto the elevator when they observed a group of adolescents standing in the hallway leading to the adjacent building, § 87(2)(b). The adolescents yelled at the officers and told them to "Get the fuck out of the building!" The adolescents were also breaking bottles in the hallway. PO Arroyo and PO Galloza continued into the elevator, resolved the assault job and returned to the lobby approximately ten minutes later.

Upon entering the hallway, PO Arroyo and PO Galloza saw that the adolescents were still in the hallway near § 87(2)(b). PO Arroyo and PO Galloza approached them, explained that they had previously heard them yelling and breaking bottles and asked them to leave the area. A male individual in the group responded by stating, "Fuck the police! What are you doing here? This is our house." PO Arroyo could not recall this individual's description. PO Arroyo noted that the people in the group appeared to be somewhat intoxicated. Several of them were slurring their speech and PO Arroyo could smell alcohol on their breath.

PO Arroyo and PO Galloza asked the adolescents for their names and IDs. They refused to provide this information. Another male individual in the group was sweeping up a clear glass bottle from the floor with a broom. PO Arroyo asked him what had happened and he quickly walked away. PO Arroyo and PO Galloza again told the individuals in the group to leave the area. They replied that they were heading towards the elevator, but PO Arroyo noticed a sign on the elevator in § 87(2)(b) that stated the elevator was broken. PO Arroyo and PO Galloza then told the group to leave via the stairs.

Another male individual stood and leaned against the elevator. PO Arroyo could not describe this individual. PO Arroyo approached him and asked him for his ID. In response, the male physically 'squared up' as though he was going to strike him and said, "What are you going to do?" The male did not strike or swing at PO Arroyo. Another adolescent from the group called to the male and he walked away from PO Arroyo and headed up the stairs. Neither PO Arroyo nor PO Galloza used any force against any of the adolescents in the group.

PO Arroyo and PO Galloza exited § 87(2)(b) and walked towards their patrol car. As they walked away, a group of approximately twenty individuals exited the building and followed them. A female individual, identified by the CCRB as § 87(2)(b), confronted PO Arroyo and PO Galloza. § 87(2)(b)

§ 87(2)(b) stated that they had been yelling at her son. PO Arroyo was not sure which of the adolescents in the lobby was the son of § 87(2)(b). PO Arroyo did not recall § 87(2)(b) asking him or his partner for their name and shield numbers, nor did he recall her alleging that they had used force against her son. Someone in the crowd, possibly a young female, threw a bottle at PO Galloza, which hit him in the chest.

Additional officers, including a lieutenant, arrived at the scene shortly thereafter. The lieutenant instructed everyone to go back inside the building. At that point, bottles were being thrown from the building. PO Arroyo reentered § 87(2)(b). He saw Lt. Raymond Festino and Sgt. Robert Conwell running towards the elevator and he followed them. A large group of people, many of whom were yelling, were crowding towards the elevator in an attempt to get on. PO Arroyo saw that officers were trying to pull people off of the elevator, but PO Arroyo did not know why. PO Arroyo did not specify which officers were attempting to pull people off the elevator.

When he reached the elevator, one of the officers asked him to assist him handcuff a black female who was being pulled away from him. PO Arroyo did not specify which officer requested this of him, nor did he specify who was pulling the black female away from the officer. PO Arroyo described the female as 5'4" tall with a thin build and shoulder-length hair who was about 16 years old. PO Arroyo identified that female, known to the CCRB as § 87(2)(b) as the daughter of the woman who confronted them outside the building. PO Arroyo assisted the other officer and then took § 87(2)(b) and placed her in a patrol car outside. PO Arroyo did not know what exactly she had done to be placed under arrest. PO Arroyo did not see any officers use their asps or batons. He also did not see any officers using pepper spray or smell pepper spray, but stated that § 87(2)(b) had claimed that she had been pepper sprayed.

PO Arroyo stated that he later saw § 87(2)(b) at the stationhouse. While he was working on paperwork, Lt. Jones approached him and told him that § 87(2)(b) wanted his name and shield number. PO Arroyo immediately walked over to her, provided this information and saw her write it down.

Lt. Raymond Festino

Lt. Raymond Festino is § 87(2)(b) old. He is a white male who is 6'2" tall, weighs 250 pounds and has brown hair and brown eyes. Lt. Festino is assigned to the 81st Precinct and has been a member of the service for thirteen years. Lt. Festino was interviewed at the CCRB on June 4, 2008 (encl. 22a – 22b). On the day of the incident, Lt. Festino worked from 7:30 PM to 5:05 AM in uniform as the assigned special operations lieutenant at the 81st Precinct. Lt. Festino did not have his memobook with him at the time of his interview with the CCRB.

CCRB Statement

On January 1, 2008, at approximately 3:00 AM, Lt. Festino responded to a call for assistance regarding crowd control at § 87(2)(b) in Brooklyn. Lt. Festino could hear screaming in the background of the radio communication and knew from past experience that the address listed was a problem location. He explained that there have been multiple homicides in the past at this location. When Lt. Festino responded to the scene, there were already three or four units present. Lt. Festino saw a group of about five female adolescents arguing in the courtyard between two of the buildings.

There was also a large crowd within which individuals were throwing bottles at the officers. Lt. Festino saw a black male wearing sunglasses and a red shirt, subsequently identified through his arrest as § 87(2)(b) throw a bottle at the officers and then run into one of the buildings. Lt. Festino did not give chase after § 87(2)(b) at this time, as the doors leading to the building were locked and his primary concern was to take cover from the bottles which were being thrown.

Lt. Festino and additional officers then went into the lobby of § 87(2)(b). The original group of female adolescents had entered the lobby as well. Though they were still engaged in an argument, they appeared to have calmed down slightly. Lt. Festino and the officers he was with instructed them to exit the lobby via the elevator. The female individuals began entering the elevator. There were approximately eight officers in the lobby of the building by this time. As the elevator doors began to close, § 87(2)(b)

entered the lobby via the back door of the building and attempted to enter the elevator. Lt. Festino told the other officers to grab § 87(2)(b).

As the officers approached the elevator and attempted to grasp § 87(2)(b) they were grabbed by their upper torso areas by a male and a Hispanic female, who was subsequently identified through her arrest as § 87(2)(b). The male individual and § 87(2)(b) were standing in the front of the elevator. Lt. Festino pulled the officer away from the elevator and pepper-sprayed both the male and § 87(2)(b) in one continuous motion. Lt. Festino stated that § 87(2)(b) was highly intoxicated, a determination he reached based on her general demeanor and slurred speech. Lt. Festino thought it was possible that other individuals on the elevator had grabbed the officers, but he only specifically pepper-sprayed § 87(2)(b) and the male individual because he had seen them grab the officers.

Officers then pulled both § 87(2)(b) and § 87(2)(b) off of the elevator. § 87(2)(b) and § 87(2)(b) resisted slightly, but the officers were able to gain control of their arms and restrain them relatively quickly. Lt. Festino and the officers he was with never used any physical force when securing these individuals in handcuffs. Lt. Festino also stated that neither he nor the officers who were involved in the incident ever used their batons. Another female individual, subsequently identified through her arrest as § 87(2)(b), § 87(2)(b) exited the elevator while the officers were attempting to handcuff § 87(2)(b). § 87(2)(b) attempted to pull § 87(2)(b) away by the feet to get her away from the officers.

§ 87(2)(b) was then placed under arrest. Lt. Festino did not specify which officers were involved in effecting her arrest, who handcuffed her, how they handcuffed her or who removed her to a police vehicle. Neither Lt. Festino nor those officers he was working with pepper-sprayed § 87(2)(b). § 87(2)(b), § 87(2)(b) and § 87(2)(b) were transported to the 81st Precinct. EMS responded to the precinct to treat these individuals for exposure to pepper spray. Lt. Festino had no further interaction with these individuals at the stationhouse.

Sgt. Robert Conwell

Sgt. Robert Conwell is § 87(2)(b) old. He is a white male who is 6' tall, weighs 190 pounds and has brown hair and hazel eyes. Sgt. Conwell is assigned to the 81st Precinct and has been a member of the service for eight years. Sgt. Conwell was interviewed at the CCRB on May 30, 2008 (encl. 24a – 24b). On the day of the incident, Sgt. Conwell worked from 7:30 PM on December 31, 2008, to 4:27 AM on January 1, 2008. He was the assigned conditions sergeant for the 81st Precinct, was in uniform and was working with PO Philip Facenda. Sgt. Conwell did not have any entries in his memobook (encl. 23a – 23b) pertaining to the incident.

CCRB Statement

On January 31, 2008, at approximately 1:00 AM, Sgt. Conwell responded to a call for assistance from PO Johnny Arroyo and his partner at § 87(2)(b) in Brooklyn. When Sgt. Conwell arrived at the scene, there was a large crowd of twenty-five to thirty people standing outside of § 87(2)(b) and inside the lobby of the building. The individuals in this crowd were yelling and screaming. The officers at the scene informed Sgt. Conwell that individuals in the crowd had thrown bottles at them. Sgt. Conwell did not specify which officers gave him this information.

Several officers arrived at the scene after Sgt. Conwell, though Sgt. Conwell did not specify who these officers were. The officers began to disperse the people in the crowd and direct them into the lobby of § 87(2)(b). The individuals in the crowd were initially reluctant to move inside, but eventually complied. When Sgt. Conwell entered the lobby, he saw a slim black male wearing a red shirt make eye contact with him and other officers. This male was identified by the CCRB as § 87(2)(b). As § 87(2)(b) looked at the officers, he reached towards his waistband and then quickly changed direction by jumping onto the elevator after seeing the officers.

Sgt. Conwell and additional officers attempted to remove § 87(2)(b) from the elevator in order to question him. The individuals inside the elevator then began to grab Sgt. Conwell and another officer by

the arms and attempted to pull them onto the elevator. Sgt. Conwell could not recall which officer was assisting him. An officer standing behind Sgt. Conwell deployed pepper spray in the direction of the individuals on the elevator. Sgt. Conwell did not know which officer used the pepper spray, though he knew it was not the officer being pulled with him onto the elevator. Sgt. Conwell did not know how many bursts of pepper spray were deployed and was not aware of any other officers using pepper spray at any point during the incident.

After being exposed to the pepper spray, a number of individuals who were on the elevator stepped into the lobby. Sgt. Conwell's eyes began to tear up from being exposed to the pepper spray. Sgt. Conwell described the scene as 'very chaotic.' He stated that the people from the elevator continued to push against both him and other officers as they made their way into the lobby. Sgt. Conwell removed his asp, held each end in both hands and used it to push the crowd away from himself and the other officers. He stated that his asp may have come into contact with individuals as he attempted to move them back, though he explained that officers are trained at the academy to use their asps in this manner as a crowd control technique. Sgt. Conwell never struck anyone with his asp, nor did he see any other officers strike anyone with an asp or baton. Sgt. Conwell did not see any officers punch or kick any civilians. Sgt. Conwell did not recall whether any officers were injured as a result of the incident.

A number of arrests were effected as a result of the incident. Sgt. Conwell assisted another officer in handcuffing a female, though he could not describe this female and did not know the circumstances under which she was arrested at that time. Sgt. Conwell later learned that she was arrested § 87(2)(a) 160.50, but did not personally observe the behavior for which she was arrested. Sgt. Conwell did not transport anyone to the 81st Precinct and did not have any further contact with any of those arrested once at the precinct. Sgt. Conwell did not know whether § 87(2)(b) was arrested as a result of the incident.

Sgt. Conwell was presented with photographs of § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b). Sgt. Conwell did not recognize any of these individuals.

PO Kim Thy

PO Kim Thy is § 87(2)(b) old. He is an Asian male who is 5'9" tall, weighs 185 pounds and has black hair and brown eyes. PO Kim is assigned to the 81st Precinct and has been a member of the service for five years. PO Thy was interviewed by the CCRB on May 30, 2008 (encl. 26a – 26b). On the day of the incident, PO Thy worked from 11:15 PM to 7:50 AM. He was in uniform and assigned to sector patrol with PO Bernabe Arriaga in a marked police vehicle. PO Thy did not have any entries in his memobook (encl. 25a – 25c) pertaining to the incident.

CCRB Statement

On January 1, 2008, PO Thy was patrolling the confines of sectors A and B with his partner, PO Bernabe Arriaga. PO Thy stated that, according to his memobook (encl. 25a – 25c), he was handling a job at 300 Vernon Avenue around the time of the incident. PO Thy was provided with details regarding the incident, but did not recall responding, nor did he find these details familiar. PO Thy was informed that, according to a SPRINT record (encl. 29a – 29c), his sector had responded to the scene. PO Thy maintained that he was unfamiliar with the incident and did not recall responding to the incident location. PO Thy stated that he had not transported any arrestees to the 81st Precinct and explained that, had he done so, this would have been recorded in his memobook.

Officers Not Interviewed by the Investigation

Lt. Ronald Anderson, PO Bernabe Arriaga, PO Jason Ianno and PO Artese Davis were identified through communications records (encl. 29a – 29c) and the 81st Precinct roll call (encl. 30a – 30c) as either present at the scene of the incident or at the 81st Precinct stationhouse. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Medical Records:

An ambulance call report was prepared on § 87(2)(b) for § 87(2)(b) (encl. 27a – 27b). Medical personnel found noted that § 87(2)(b) was alert and oriented and found no evidence of shortness of breath, chest pain, bleeding, or distress. Aside from the effects of pepper-spray, medical personnel found no evidence of any other obvious injuries.

An ambulance call report was prepared on § 87(2)(b), for § 87(2)(b) (encl. 28a – 28b). Medical personnel noted that, aside from the effects of pepper spray, § 87(2)(b) had no other observable injuries. Her bilateral lungs were clear and her mother was at the scene.

Communications Records:

SPRINT Record

According to a SPRINT record from January 1, 2008 (encl. 29a – 29c), a female individual called 911 at 2:44 AM and reported that, twenty minutes prior, her sister had assaulted her in her residence, located in apartment § 87(2) of § 87(2)(b). At 2:58 AM, Sector F from the 81st Precinct responded to the scene. At 3:13 AM, Sector F requested additional units to the scene for crowd control. A foot post, two patrol sergeants, a patrol lieutenant, Sector A, and Sector E from the 81st Precinct were reportedly at the scene. At 3:16 AM, a patrol sergeant advised Central that no further units were required at the scene. At 3:21 AM, Central was advised that one female individual was being transported to the precinct. At 3:21 AM, Sector A and one of the patrol sergeants resumed patrol. At 3:23 AM, Sector E resumed patrol.

At 3:27 AM, Sector F advised Central that three arrests had been made. At 3:27 AM, Central requested that EMS respond to the 81st Precinct in regards to an arrestee. At 4:06 AM, EMS arrived at the 81st Precinct. At 7:22 AM, Sector F called in the final disposition of the call as a 10-92C (crime arrest).

Police Department Documents:

81st Precinct Roll Call

According to the roll call for January 1, 2008 (encl. 30a – 30c), Lt. Jones was the assigned integrity control officer; PO Davis and PO Ianno were assigned to Sector E; PO Arroyo and PO Galloza were assigned to Sector F; PO Arriaga and PO Thy were assigned to Sector A; and Sgt. Conwell was assigned to the desk.

81st Precinct Command Log

The command log for January 1, 2008 (encl. 31), shows that § 87(2)(b), § 87(2)(b) and § 87(2)(b) were arrested and brought into the 81st Precinct by PO Galloza § 87(2)(a) 160.50. Their physical and mental condition was listed as apparently normal, though § 87(2)(b) and § 87(2)(b) were reportedly suffering irritation from pepper-spray exposure.

81st Precinct Prisoner Holding Pen Roster

The holding pen roster for January 1, 2008 (encl. 32a – 32b) shows that § 87(2)(b) and § 87(2)(b) was lodged in the holding cell from 3:30 AM to 7:00 AM.

Property Vouchers

Vouchered to § 87(2)(b) were the following items: one cellular telephone; one cellular telephone battery and five keys on a black plastic key chain (encl. 33).

Bench Warrant

A bench warrant was issued for § 87(2)(b) on § 87(2)(b) when he failed to appear in court regarding a criminal court case stemming from an arrest effected on January 1, 2008 (encl. 34).

Disposition of Relevant Arrests

§ 87(2)(a) 160.50

§ 87(2)(a) 160.50

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Notice of Claim Inquiry

As of November 13, 2008, the Comptroller's Bureau of Law and Adjustment determined that a notice of claim with regard to the incident has not been filed (encl. 36).

Officer CCRB History

Lt. Raymond Festino has been a member of the service for thirteen years (encl. 3a – 3b). In CCRB case number 200200019, vehicle stop, threat of force and discourtesy allegations were substantiated against him and command discipline was imposed. In CCRB case number 200301734, a questioned and stopped allegation and failure to produce stop and frisk allegation were substantiated against him. Upon departmental trial, he was found guilty of both specifications and command discipline was imposed with respect to the questioned and stopped allegation. In CCRB case number 200305958, a questioned and stopped allegation, refusal to provide name and shield number and retaliatory arrest allegation were substantiated against him. Upon departmental trial, he was found guilty of all three specifications and command discipline was imposed with respect to the questioned and stopped allegation.

Sgt. Robert Conwell has been a member of the service for eight years and PO Johnny Arroyo has been a member of the service for three years. They have had no CCRB allegations substantiated against them (encl. 3c – 3d). As PO Emmanuel Galloza has since left the service, his CCRB history was unavailable.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) alleged that an officer, whom he referred to as PO Galloza and described as a white or Hispanic male who was about 5'4" to 5'5" tall, weighed 160 pounds, had black hair, a moustache and acne on his face, used physical force against him. § 87(2)(g)

§ 87(2)(b) alleged that a white male officer, who was about 6' tall, thin, had black hair and was in a blue uniform pulled him off of the elevator in § 87(2)(b) § 87(2)(g)

§ 87(2)(b) also alleged that an officer pepper-sprayed him while he was in the elevator. § 87(2)(g)

§ 87(2)(b) alleged that an officer whom she identified by name as Lt. Festino pepper-sprayed her in the face. § 87(2)(g) [REDACTED]. § 87(2)(b) also alleged that multiple officers grabbed her and put her up against a wall in the lobby. Due to the effects of the pepper spray, § 87(2)(b) could not see and therefore could not describe the officers who used force against her. § 87(2)(g) [REDACTED].

§ 87(2)(b) alleged that a white male officer who was between 5'5" to 6' tall grasped her and pulled her towards him before pepper-spraying her. § 87(2)(g) [REDACTED]. PO Arroyo, PO Galloza and Sgt. Conwell did not recall the circumstances under which § 87(2)(b) was arrested. Though Lt. Festino stated she was arrested, he could not specify which officers effected her arrest or secured her in handcuffs. § 87(2)(g) [REDACTED].

§ 87(2)(b) alleged that, while being escorted towards a police vehicle, an officer refused to provide his name and shield number to her upon request. PO Arroyo admitted to walking § 87(2)(b) to a police vehicle after she was arrested. § 87(2)(g) [REDACTED].

Undisputed Facts

It is undisputed that § 87(2)(b), § 87(2)(b) and § 87(2)(b) were congregating in the lobby of § 87(2)(b). It is undisputed that officers responded to this location. It is undisputed that Sgt. Conwell stopped § 87(2)(b). It is undisputed that Lt. Festino pepper-sprayed the interior of the elevator in § 87(2)(b). It is undisputed that § 87(2)(b), § 87(2)(b) and § 87(2)(b) were arrested as a result of the incident.

Disputed Facts

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Assessment of Evidence

§ 87(2)(b) alleged that PO Galloza pushed him on his back, causing him to stumble forward several paces before colliding with the wall next to the stairwell. He asserted that his left hand was injured as a result of hitting the wall, though he did not seek medical treatment as a result of the incident or explain the manner in which his hand was allegedly injured. § 87(2)(b) then alleged that PO Galloza hit him on the back of his head with the base of his palm. § 87(2)(b), § 87(2)(g) [REDACTED]. § 87(2)(b) stated that PO Galloza pushed § 87(2)(b) in the chest, causing him to then hit an unspecified part of his body against the wall near the bottom of the staircase.

According to PO Galloza, he observed a group of adolescents in the hallway between § 87(2)(b) and § 87(2)(b) who were yelling and throwing glass bottles. PO Galloza heard them say, "Fuck the police! Get out of my fucking building!" When presented with a photograph of § 87(2)(b) PO Galloza identified him as one of the adolescents in the hallway. He recalled that § 87(2)(b) had taken off his shirt as though he were preparing to fight someone, but stated that he never pushed or struck § 87(2)(b).

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that Sgt. Conwell swung his asp in the interior of the elevator, striking her on the right side of her upper lip in the process. Sgt. Conwell stated that he removed his asp and held each end of the asp in both hands to push the occupants on the elevator away from both him and the officers. Though he acknowledged that his asp may have come into contact with the occupants of the elevator, he stated that he never struck anyone with his asp. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

according to an ambulance call report (encl. 28a – 28b), § 87(2)(b) § 87(2)(b) had no other complaints aside from noting that she had been pepper-sprayed, stated she felt fine after the effects of the pepper-spray were treated and also stated that she did not want to go to the hospital.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was § 87(2)(b)'s acquaintance and admitted to pulling her away from the officers on the day of the incident. § 87(2)(b), § 87(2)(g)

According to § 87(2)(b) she exited the elevator and questioned Lt. Festino regarding his actions with respect to § 87(2)(b). She alleged that Lt. Festino then pepper-sprayed her directly in the face and, when asked why Lt. Festino had done this, alleged that she was pepper-sprayed a second time in the face. Lt. Festino admitted to pepper-spraying § 87(2)(b) but stated that he did so only once when she was still on the elevator and was pulling § 87(2)(b) away from Sgt. Conwell. While Sgt. Conwell, PO Galloza and PO Arroyo knew that an officer had pepper-sprayed either an individual or individuals in the crowd, they did not know the circumstances under which the pepper spray was used.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that she was grabbed by multiple officers, whom she could not describe, and placed against a wall in the lobby of § 87(2)(b). § 87(2)(b) stated that she was not injured as a result of this maneuver. Lt. Festino stated that the officers were able to gain control of § 87(2)(b)'s arms and restrain her relatively quickly, which was consistent with PO Galloza's statement. § 87(2)(b), § 87(2)(g)

According to § 87(2)(b) she and an acquaintance, § 87(2)(b) attempted to walk away from the lobby. § 87(2)(b) alleged that an officer approached her and pulled her towards him. When § 87(2)(b) attempted to pull § 87(2)(b) away from this officer, a brief struggle ensued and the officer then allegedly pepper-sprayed § 87(2)(b) in the face.

§ 87(2)(b), § 87(2)(g) § 87(2)(b) stated that both § 87(2)(b) and § 87(2)(b) were arrested immediately upon their exit off of the elevator and into the lobby. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) also stated that § 87(2)(b) was not pepper-sprayed outside of the elevator. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that an officer, whom she could not see as a result of the effects of the pepper spray, refused to provide his name and shield number to her. She alleged that she requested this information while being escorted to a police vehicle outside of § 87(2)(b). PO Arroyo admitted to handcuffing and then escorting § 87(2)(b) towards a police vehicle. He did not mention her requesting his name and shield number at this time.

No one witnessed § 87(2)(b)'s exchange with PO Arroyo. § 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that Lt. Festino commanded those in the lobby to leave or they would be arrested. §

§ 87(2)(b), § 87(2)(g)

Allegation A. PO Emmanuel Galloza used physical force against § 87(2)(b)

§ 87(2)(g), § 87(2)(b)

Allegation B. Sgt. Robert Conwell stopped § 87(2)(b)

Allegation C. Lt. Raymond Festino pepper-sprayed § 87(2)(b)

§ 87(2)(g), § 87(2)(b)

Allegation D. Sgt. Robert Conwell struck § 87(2)(b) with an asp

§ 87(2)(g), § 87(2)(b)

Allegation E. Lt. Raymond Festino pepper-sprayed § 87(2)(b)

§ 87(2)(g), § 87(2)(b)

According to Patrol Guide Procedure 212-95, pepper-spray should be used to “effect an arrest, or establish physical control of a subject resisting arrest” (encl. 1a). § 87(2)(g), § 87(2)(b)

Patrol Guide Procedure 212-95 also notes that the use of pepper spray acts frequently as a deterrent to further violence by temporarily disabling a subject without injury and, “in many cases, pepper spray will reduce or eliminate the need for substantial physical force to effect an arrest or gain custody” (encl. 1a).

§ 87(2)(g), § 87(2)(b)

The Police Academy Curricula's materials regarding the use of force note also that the effects of pepper spray, while uncomfortable, are relieved by rinsing and typically fade within a short period (encl. 2). Upon being transported to the 81st Precinct, § 87(2)(b) was promptly treated by EMS for exposure to pepper-spray (encl. 27a – 27b). § 87(2)(b), § 87(2)(g)

Allegation F. Officers used physical force against § 87(2)(b)

According to Patrol Guide Procedure 203-11, officers may use “only that amount of force necessary to overcome resistance” in order to effect an arrest (encl. 1b). According to § 87(2)(b) officers grabbed her, put her against a wall and secured her in handcuffs. § 87(2)(b), § 87(2)(g)

Allegation G. An officer used physical force against § 87(2)(b)

Allegation H. An officer pepper-sprayed § 87(2)(b)

§ 87(2)(g), § 87(2)(b)

Allegation I. PO Johnny Arroyo refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(g), § 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: